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**Long Island NY Area Local, American Postal Workers Union AFL-CIO and Marc Dralus and George O'malley.** Cases 29-CB-13164 and 29-CB-13195

June 29, 2007

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS SCHAMBER  
AND WALSH

On January 2, 2007, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief, to which the Respondent filed an answering brief. The Respondent filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision in light of the record and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order.<sup>3</sup>

<sup>1</sup> The General Counsel moves to strike the Respondent's brief in support of cross-exceptions, arguing that the brief misrepresents the record in several respects and fails to comply with Sec. 102.46 of the Board's Rules. With respect to noncompliance with Sec. 102.46, the General Counsel argues that the brief does not reference the specific cross-exceptions to which the brief relates. The motion is denied, as the brief substantially complies with the requirements of Sec. 102.46, see *La Gloria Oil & Gas Co.*, 337 NLRB 1120 fn. 1 (2002), and because the alleged factual misrepresentations are not sufficiently serious and numerous to warrant striking the brief.

<sup>2</sup> We find merit in the General Counsel's exception that the judge erred in failing to find that the Respondent was motivated by animus toward Marc Dralus' exercise of his Sec. 7 rights when insisting that the Employer not assign him overtime work. The Respondent engaged in the same conduct at the same time toward George O'Malley, who, along with Dralus, exercised his Sec. 7 right to refrain from membership in the Respondent. The judge, however, only found Sec. 7 animus as to O'Malley. Although the evidence establishes animus as to Dralus as well, we find that the Respondent satisfied its rebuttal burden because it is undisputed that Dralus' name was not placed on the quarterly overtime desired list before the quarter began, as required by the parties' collective-bargaining agreement, and the Respondent has met its burden of showing that it would have insisted that Dralus not be assigned overtime for this reason in any event.

<sup>3</sup> Member Schaumber agrees with his colleagues that the Respondent did not violate Sec. 8(b)(1)(A) by refusing to process Dralus' grievance regarding overtime work. While, as the judge correctly observed, Respondent has a fiduciary duty to fairly represent all employees for whom it is the designated bargaining representative, without consideration of their union membership, Dralus' name did not appear on the quarterly overtime desired as mentioned above, and the General Counsel failed to offer any additional evidence supporting the merit of

The General Counsel excepts, among other things, to the judge's failure to find that the Respondent violated Section 8(b)(2) by filing a May 9, 2006 grievance against the Employer for assigning George O'Malley 8 hours of overtime work on April 4, 2006. Although we agree that the consolidated complaint includes this allegation, we find it unnecessary to decide whether the May 9 grievance separately violated the Act, because such a finding would not materially affect the remedy. Accordingly, we find it unnecessary to pass on this 8(b)(2) allegation.<sup>4</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Long Island New York Area Local, American Postal Workers Union, AFL-CIO, Valley Stream, New York, its officers, agents, and representatives, shall take the action set forth in the Order. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. June 29, 2007

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Robert J. Battista, Chairman

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Peter C. Schaumber, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

**APPENDIX**

NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain on your behalf  
with your employer

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Dralus' grievance. See, e.g., *Electrical Workers Local 2127 (I-T-E Electrical Products)*, 271 NLRB 885, 888-889 (1984).

<sup>4</sup> Member Schaumber would find that the facts establish that the Respondent violated Sec. 8(b)(2) by filing its grievance against the Employer for assigning overtime work to O'Malley.

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT cause or attempt to cause the United States Postal Service to deny overtime assignments to George O'Malley because he has chosen not to be a member of the Union.

WE WILL NOT in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make George O'Malley whole for any loss of earnings and benefits he may have suffered as a result of the discrimination against him.

LONG ISLAND NY AREA LOCAL, AMERICAN  
POSTAL WORKERS UNION, AFL-CIO

*Nancy Reibstein, Esq.*, for the General Counsel.

*Anton G. Hajjar, Esq.*, for the Respondent.

#### DECISION

##### STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Brooklyn, New York, on October 10, 2006. The charge in Case 29-CB-13164 was filed by Marc Dralus on May 25, 2006. The charge in Case 2-CB-13195 was filed by George O'Malley on July 13, 2006. A complaint in Case 29-CA-13164 was issued on June 28, 2006, and a consolidated amended complaint was issued on July 2006.

In substance, the consolidated alleged as follows:

1. That on or about April 5, 2006, the Respondent, for discriminatory reasons, caused or attempted to cause the Employer to refuse to allow Dralus and O'Malley to be on the "Overtime Desired" list and thereby cause them to lose overtime work.

2. That on or about April 6, 2006, the Union, for arbitrary and unfair reasons and because Dralus and O'Malley were not union members, refused to process their grievance regarding the Employer's failure to place them on the "Overtime Desired" list for the second quarter of 2006.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The United States Postal Service and the Respondent are subject to the jurisdiction of the National Labor Relations Board (the Board) pursuant to Section 1209 of the Postal Reorganization Act of 1970.

##### II. ALLEGED UNFAIR LABOR PRACTICES

This case involves clerks employed at the post office in Valley Stream, New York. The postal clerks are covered by a national collective-bargaining agreement between the US Postal Service and American Postal Workers Union, AFL-CIO.

The local union is the Long Island NY Area Local, American Postal Workers Union, AFL-CIO. During the relevant period of time, there were about 26 clerks, some of whom were members of the Union and others, including Marc Dralus and George O'Malley, who were not members.

In the case of O'Malley, he was a member of the Union until he resigned in 1998. During a period from 1990 to 1992, he was an assistant shop steward. Inasmuch as Dralus did not testify in this proceeding, I do not know when he resigned. The evidence showed that documents were posted on the union bulletin boards indicating who are members and who are not members. Also posted on union bulletin boards were flyers describing, in unflattering terms, the word "scab."

Article 15 of the contract contains a grievance procedure providing for a multiple-step procedure culminating in arbitration. At step 1, the contract provides that any employee "who feels aggrieved" must discuss his or her grievance with the immediate supervisor within 14 days of the date when the employee learned or could reasonably have expected to learn of the incident. Step 1 grievances also can be initiated by the Union within 14 days of the occurrence. At the step 1 level, the supervisor and the union representative are authorized to settle a grievance in whole or in part. In the event that no resolution is reached, the supervisor is required to render a decision within 5 days unless the parties agree to an extension. If the Union is not satisfied, it may appeal an adverse decision to step 2 within 10 days after receipt of the supervisor's decision. The step 2 appeal, unlike the step 1 grievance, specifically requires the Union to generate a document on a standard grievance form indicating: (1) a detailed statement of facts; (2) the contentions of the grievant; (3) the particular contractual provisions involved; and (4) the remedy sought.

Article 8 deals generally with hours of work and article 8, section 5, deals with overtime assignments. The latter provision provides for a system whereby "two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an 'Overtime Desired' list." Basically, this is designed so that the employees can self-select who will be available for overtime work during the ensuing 3-month period. It therefore is designed to give overtime to those employees who want it and excuse from overtime assignments, to the extent possible, those employees who do not want them.

Before the second quarter of 2006, the system operated by having a signup sheet posted before each quarter. Supervisor William Lombardo would then take the completed signup sheet and transpose those names onto a second list that he generated and maintained at his office. This second list, which contained the names of the people who had signed up for overtime, was generated for each week during the quarter and indicated who was eligible for and who was given overtime assignments during the week, and how many hours each person worked. The employees on the second list were categorized by their normal days off because those were the days that they would be eligible to work overtime. Thus, if a set of employees normally took their days off on Tuesday, then they would be eligible to get overtime assignments for Tuesdays. If another set of em-

ployees normally took their days off on Wednesday, then they would be eligible for overtime assignments on Wednesday.

In any event, Lombardo testified that in utilizing the second list, he used seniority to make only the initial assignment of overtime to a person on that list. For example, if overtime was available on the first Monday of the new quarter, the highest qualified person on the second list, whose normal off day was Monday, would be the first person offered that overtime assignment. After that first day, and for the remaining 3 months, the employees on the list who were eligible for Monday overtime would be offered overtime on a rotating basis. Over a 3-month period, this tended to result in rough equality in overtime assignments.

On January 25, 2005, a labor-management meeting was held at the Valley Stream Post Office. A number of items were discussed including the "Overtime Desired list." According to Postmaster James Meade (who had recently come into this office), the Union made a number of nonspecific allegations of favoritism. With respect to the list, both he and Elaine Marzocchi (also recently elected to the position of chief shop steward), testified that the parties agreed that from then on, it would be the Union that would administer the "list" instead of Lombardo. That meant that Marzocchi and her assistant shop steward, Sharkey, were delegated the function of making up the "second" list from the sign in sheets and keeping track of who was getting overtime assignments and making sure that those assignments were being allocated in a fair manner. The Union agreed to perform this function and Meades apparently was glad to get rid of it.

An overtime signup sheet was posted sometime between 12 and 15 days before April 1, 2006, which is the start of the next quarter. During at least some part of that time, Dralus was on leave to take care of a sick family member and apparently telephoned Lombardo and asked him to do him a favor and place his name on the signup sheet. Lombardo testified that he forgot to do this and as a result, Dralus' name did not appear on the signup sheet when Marzocchi made up the list that she and Sharkey were going to use to make the overtime assignments during the second quarter of 2006. (In making the new list, she essentially followed the pattern and practice that Lombardo had done before.)

As for O'Malley, testified that during the open period, he signed the signup sheet in the presence of another employee and near where Lombardo was situated. However, the signature that O'Malley identified as his own, bears no resemblance to his or anyone else's signature. He testified that he signed the sheet this way because on two or three occasions, some years ago, someone had written "scab" next to his name. In any event, the signature that he identified has no relationship to O'Malley's normal signature and is completely illegible.

Marzocchi testified that on March 30, 2006, she took down the signup sheet and using a copy from the previous quarter's list prepared by Lombardo, whitened out the names of Dralus and O'Malley because their names (which were on the previous quarter's list) were not on the signup sheet. She testified that she then left the new list in the office and when she next found it on or about April 1, 2006, she noticed that Lombardo had written in the names of Dralus and O'Malley. She testified that

since their names were not on the signup sheet, and inasmuch as Lombardo no longer was supposed to be responsible for taking care of the "list" she took a magic marker and blacked out these two names. She testified that she received a written note from Lombardo stating that Dralus had called him on March 23 and asked that Lombardo put his name on the sign-up sheet and that it was Lombardo had forgotten to put his name on the list. As to O'Malley, Lombardo's note asserted that he and Bruce Roettinger saw O'Malley sign the signup sheet.

According to Marzocchi, she did not believe that the procedure allowed for an employee to have someone else sign his or her name. She also testified that looking at the signup sheet, she could not see any signature that bore even the slightest resemblance to the signature of O'Malley and she didn't believe Lombardo's statement that he saw O'Malley sign the sheet. (Marzocchi testified that for many years, she took care of the timecards and was very familiar with the employees' signatures.)

At a meeting held on April 5, 2006, the Union's representatives, at the end of the meeting, complained that Lombardo had disregarded the Union's new responsibility for preparing the "Overtime Desired List" by disregarding it and assigning overtime to George O'Malley. Postmaster James Meade testified that the Union's representatives were adamant as to O'Malley and although they acknowledged receiving Lombardo's letter (described above), their position was that they did not believe Lombardo. He also testified that if the Union's representatives stated that if Company insisted on giving overtime to Dralus and O'Malley, the Union would file a grievance. Meade further testified that Union Representative Peebles stated that he didn't know what the story was with O'Malley because they saved his job and they don't know why he's not in the Union. And while it is true that Meade's testimony as to this last statement only came out during cross-examination, it is also true that the Respondent did not attempt to call any witnesses to rebut it.

As a result of the April 5 meeting, Lombardo was told by Meade not to assign overtime to Dralus or O'Malley for the remainder of the quarter and he complied. Also, it appears that the parties agreed that when employees signed the signup sheet, they would have to print their names in addition to writing their signatures. This new procedure was implemented starting with the next quarter (July to October). In this regard, Dralus and O'Malley signed and printed their names and were put on the "Overtime Desired List." Therefore, the only overtime loss that is claimed in this case is overtime for the period between April 1 and June 30, 2006.

At some point, probably after the April 5 meeting, O'Malley asked Assistant Shop Steward Sharkey to file a grievance against the Employer for its refusal to assign him overtime. O'Malley testified that he sat down with Sharkey who wrote down what he had to say and he thought that this was tantamount to the filing of a grievance. (The record does not show if Dralus actually filed a grievance.)

In early May 2006, Dralus and O'Malley asked Shop Steward Marzocchi to process grievances regarding the Company's failure to give them overtime. She refused and told them that she had killed the grievance.

The General Counsel asserts that the Union refused to process these grievances even though the Employer was willing to accede to the claims of Dralus and O'Malley. But this misses the point. Assuming that Dralus and O'Malley were successful in their grievances and were given overtime assignments during the quarter from April to June 30, 2006, this would necessarily involve reducing the overtime opportunities for the other employees who were on the Overtime Desired List. Thus, if Dralus and O'Malley were not legitimately entitled to get overtime (because they had not signed the signup sheet), then a favorable resolution of their grievances would result in a detriment to other employees who were in the bargaining unit and to whom the Union also owed a duty of fair representation.

### III. ANALYSIS

Section 8(b)(2) makes a union liable if it causes or attempts to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act or to discriminate against an employee with respect to whom membership has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

If a union causes the discharge of an employee because he or she has chosen not to be a union member or because of his union activity (or lack thereof), this would constitute a violation of Section 8(b)(2). Except in circumstances where there is a valid union-security clause and the employee has *not* been denied union membership because of his failure to pay the uniformly required union dues and fees (or their equivalent), a union violates this section of the Act if it makes an efficacious demand that an employer discharge, or otherwise discriminate against an employee because of his or her nonmembership. *Letter Carriers Branch 86 (Postal Service)*, 315 NLRB 1176, 1177-1178 (1994).<sup>1</sup>

Similarly, a union's efficacious attempt to cause an employer to discharge an employee because of his internal dissident union activities is also a violation of the Act. *USF Red Star, Inc.*, 330 NLRB 53, 57-58, (1999). Moreover, the violation relates to any form of discrimination and not just to "causing" a discharge. Thus, in *Letter Carriers Branch 3126 (Postal Service)*, 330 NLRB 587 (2000), the Board held that there was a violation of Section 8(b)(2) when a union, through its shop steward, demanded that an employer refuse to allot overtime to an employee because he had resigned his membership in the union.

In essence, Section 8(b)(1)(A) prohibits a union from restraining or coercing employees in the rights guaranteed by Section 7 of the Act. When a union violates Section 8(b)(2) by causing an employer to discriminate against an employee be-

cause the employee has withdrawn his union membership or has engaged in dissident union activity, this is also a derivative violation of Section 8(b)(1)(A) because the union's actions constitute restraint or coercion on the rights of employees to refuse to engage in protected concerted activity, including the right to refrain from joining a union.

There is also a line of cases that hold that a union violates Section 8(b)(1)(A) if it fails to fairly represent the employees for whom it is the designated bargaining representative. *Vaca v. Sipes*, 386 U.S. 171 (1967). The theory here is that once delegated the authority in accordance with Section 9(a) of the Act to be the exclusive representative of employees within a specified bargaining unit, a union has a kind of fiduciary duty to represent them all fairly. Thus, a union is required to represent (for example in bargaining or grievance matters) all employees without consideration of their union membership or activity. *Machinists District 186 (Federal Mogul)*, 291 NLRB 535 (1988). Nor may a union act, or fail to act (for example by refusing to process an employee's grievance) in a manner that is arbitrary, discriminatory or in bad faith. *Vaca v. Sipes*, *supra*.

The situations involving O'Malley and Dralus are similar to the extent that they both had resigned from the Union and were not members at the time of these incidents.

But their situations are different because in order to be eligible for overtime during the period in question, they would have had to have signed the required signup sheet for the "Overtime Desired List." And in this case, while O'Malley may very well have signed up for this overtime, Dralus did not.

#### A. O'Malley's Case

As described above, in order to be placed on the "Overtime Desired List" and be considered for overtime assignments, the contract requires that any employee desiring overtime for a given quarterly period, sign up for these assignments. In the past, a signup sheet was put up about 12 to 15 days before the beginning of the quarter and the supervisor was the person who transposed the names of the people who signed up to a second list that was then used to assign overtime. By mutual agreement, in January 2006, that procedure was slightly changed so that instead of the Company's supervisor doing it, the Union's representatives would transpose the names on the signup list to the overtime list.

In March 2006, O'Malley signed the signup list, albeit he did so in a way that his signature could not be read.

Union Steward Elaine Marzocchi testified that when she received the signup sheet, she did not put O'Malley's name on the overtime assignment list because she didn't see his name on the signup sheet. This was understandable. She also testified that on the following day, she noticed that Supervisor Lombardo had inserted O'Malley's name on the overtime assignment list whereupon she crossed his name out. In my opinion, Marzocchi reasonably concluded that Lombardo was interfering with the agreement that had just been reached where she, and not Lombardo, was responsible for making up the overtime list from the names that appeared on the signup sheet.

At a meeting held on April 5, 2006, a number of other subjects were first discussed. However, at the end of the meeting, the Union's representatives complained that Lombardo had

<sup>1</sup> In *Stereotypers No. 120 (Dow Jones & Co.)*, 175 NLRB 1066 fn. 3 (1969), the Board stated:

The Trial Examiner held that "if Respondent's objections [to Anderson's transfer] had amounted to no more than a simple request, this might not have satisfied the term 'cause or attempt to cause' as used in the Act. We do not agree. In accordance with our previous holdings, we hold in this case that a union's efficacious request that an employer discriminate against an employee is unlawful. . . . We do not find it necessary, therefore, to determine whether the Respondent's request was fortified by a threat."

interfered with the previous agreement that the Union was to be responsible for preparing and administering the overtime list. There was some discussion of a letter that Lombardo had written in which he asserted that O'Malley had, in fact, signed the sign-up sheet. As to this, Postmaster Meade testified that the union representatives said that they didn't believe Lombardo. Meade further testified that Union Representative Ron Peebles stated that *he didn't know what the story was with O'Malley because they had saved his job and they didn't know why he was not in the Union*. This testimony was not contradicted.

In light of the statement by Peebles at the April 5 meeting, made in the context of the Union's position that O'Malley was not entitled overtime, I infer that the decision to insist that O'Malley not be assigned overtime for the 3-month period starting on April 1, 2006, was motivated mainly by his non-membership in the Union and the feeling by union representatives that O'Malley had been insufficiently grateful for some help that the Union had given him in the past. In this instance, O'Malley had signed the sign-up sheet and the Union chose not to verify that fact with either O'Malley or anyone else.

On the basis of this record, I conclude that in O'Malley's case, the Union effectively caused the Employer to refuse to give him overtime assignments for the period from April 1 to June 30, 2006, primarily because O'Malley had chosen not to be a member of the Union. I therefore conclude, in accordance with the standards set forth in *Wright Line*, 251 NLRB 1083 (1980), that in this respect, the Respondent violated Section 8(b)(2) and (1)(A) of the Act. Inasmuch as I have concluded that the Union violated this section of the Act, which will require a backpay remedy, it is unnecessary, in my opinion, to reach any conclusion as to whether the Union breached a duty of fair representation regarding a grievance that O'Malley alleged filed over his overtime claim.

#### B. The Dralus Affair

Dralus did not sign the sign-up sheet. The claim is that Lombardo had agreed to put his name on the sign-up sheet but forgot to do so. The bottom line is that neither Dralus, nor anybody on his behalf, put his name on the sign-up sheet. And, as this was a contractual prerequisite for being given overtime assignments for the quarter starting on April 1, 2006, there is simply no basis for finding that Dralus was eligible for those assignments.<sup>2</sup>

Accordingly, when the Union's representatives insisted that Dralus was not eligible for overtime assignments from April 1 to June 30, 2006, they were absolutely correct. If an employee who failed to sign the sign-up sheet could, after the fact, successfully argue that he nevertheless should be placed on the overtime list because he forgot to put his name on the sign-up sheet, then there would be no point in having the sign-up sheet at all. It could simply be disregarded. There is a legitimate reason for requiring employees to sign the sign-up sheet in advance of the quarter. This is so that all employees in the unit can make their plans in advance and have a reasonable expecta-

<sup>2</sup> This should not be read to mean that I would conclude that the contract permitted an employee to designate someone else to write his name on the sign-up sheet.

tion as to what if any overtime they will be assigned to during a given period of time, I fully appreciate the Union's insistence that the procedure be complied with by all of the employees.

The statement made by Peebles at the April 5 meeting regarding O'Malley does not, in my opinion, necessarily apply to Dralus. And even if there was some ill feeling regarding the fact that Dralus had chosen, at some time in the past, to resign from union membership, the facts in this case convince me that the Union's representatives were correct in insisting that the agreed upon procedure should be followed, without an exception being made for Dralus.

Accordingly, I conclude that the Union has not violated the Act insofar as it makes allegations concerning Dralus.

#### CONCLUSIONS OF LAW

1. By causing the Valley Stream office of United States Postal Service to deny overtime assignments to George O'Malley for the period from April 1 to June 30, 2006, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and (1)(A) of the Act.

2. The unfair labor practices found above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

3. Except to the extent found herein, I conclude that the Respondent has not violated the Act in any other manner encompassed by the complaint.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Union has caused the Employer to not assign certain overtime to O'Malley, I shall recommend that it be ordered make him whole for any loss of earnings and other benefits he may have suffered by reason of the discrimination against him less any net interim earnings, the amount of back pay to be calculated in accordance with *F. W. Woolworth*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondent, Long Island NY Area Local, American Postal Workers Union, AFL-CIO, Valley Stream, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause the United States Postal Service to deny overtime assignments to George O'Malley because he has chosen not to be a member of the Union.

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make George O'Malley whole for any loss of earnings and benefits he may have suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(b) Post at its office copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C., January 3, 2007.

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<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT cause or attempt to cause the United States Postal Service to deny overtime assignments to George O'Malley because he has chosen not to be a member of the Union.

WE WILL NOT in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make George O'Malley whole for any loss of earnings and benefits he may have suffered as a result of the discrimination against him.

LONG ISLAND NY AREA LOCAL, AMERICAN POSTAL WORKERS UNION, AFL-CIO